



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI

IN THE MATTER OF THE  
COMPLAINT OF OMEGA PROTEIN, INC.,  
OWNER OF F/V SANDY POINT  
FOR EXONERATION FROM AND/OR  
LIMITATION OF LIABILITY

CIVIL ACTION NO.: 1:11cv215 HSO-JMR

**COMPLAINT FOR EXONERATION FROM AND/OR LIMITATION OF LIABILITY**

The Complaint of Omega Protein, Inc., in a cause for exoneration from, and/or limitation of liability, pursuant to 46 U.S.C. § 30501, et seq. and all laws supplementary and amendatory thereof, within the purview of Rule 9(h) Federal Rules of Civil Procedure and Supplement Admiralty Rule F, with respect represents:

1.

Omega Protein, Inc. is a corporation existing under the laws of the State of Virginia, authorized to do and doing business in the State of Mississippi and in the Southern District of Mississippi.

2.

At all times hereinafter mentioned, Omega Protein, Inc. was the owner of the F/V SANDY POINT, (official number 298617) a fishing vessel registered with the United States Coast Guard and plying the waters of the United States and the territorial waters of Mississippi with a port out of Moss Point, Mississippi.

3.

This Honorable Court is vested with jurisdiction pursuant to the provisions of 28 U.S.C. §1333.

4.

As the F/V SANDY POINT is currently in this District, Petitioners affirmatively show that venue is proper in this District pursuant to Rule F(9) of the Supplemental Rules for Certain Admiralty and Maritime Claims.

5.

On or about 18 May 2011, an accident occurred while the steamer, F/V SANDY POINT collided with the M/V EURUS LONDON in the Gulfport Shipping Channel off the coast of Mississippi just west of Ship Island.

6.

As a result of the aforementioned incident, the crewmembers of said vessel thereon are alleging injuries to their persons. Omega Protein, Inc.'s first notice of their claims was received on 18 May 2011.

7.

Petitioner believes and therefore alleges that the value of F/V SANDY POINT on and subsequent to 18 May 2011, did not exceed FIFTY THOUSAND AND 00/100 DOLLARS (US\$50,000.00) and that she had no freight pending at the end of that voyage.

8.

Petitioner shows that if it should be held liable to any degree to anyone, which is denied, the liability should be limited to and should not exceed the value of plaintiff's interest in said

vessel and her freight then pending in the aggregate of FIFTY THOUSAND AND 00/100 DOLLARS (US\$50,000.00).

9.

Petitioner is not aware of any demands, liens, or claims made against F/V SANDY POINT arising out of the incident involving the F/V SANDY POINT on or about 18 May 2011, or any suits pending as a result. Petitioner is not aware of any pending lawsuits which have been filed in connection with this matter, either in state or federal court.

10.

This Complaint is filed within six (6) months from the date petitioner received the first written notice of claim from any claimant following the aforesaid casualty. This incident as described herein, any physical damage, personal injury, death, contingent losses, expense, costs, pollution, environmental damage, destruction and damages were caused or contributed due to, done, occasioned and/or incurred without the privity and knowledge of petitioners the F/V SANDY POINT master, or petitioners, management, superintendents, or managing agents.

11.

Petitioner files herewith \$250.00 into the registry of the Court in lieu of a cost bond and herewith deposits with the Court as security, for the benefit of all claimants, an ad interim stipulation for value, with proper security, in the sum of FIFTY

THOUSAND AND 00/100 DOLLARS (US \$50,000.00) plus interest at 6% per annum from the date of such stipulation, with said sum being not less than the amount of value of plaintiff's interest in the said F/V SANDY POINT and pending freight, at the end of the aforesaid voyage, all of which is set forth in the Affidavit of Value by surveyor Andrew Minster of Rivers & Gulf Marine Surveyor, Inc., attached hereto as Exhibit "A."

12.

Petitioner claims exoneration from or limitation of liability for any and all loss, damage, death, injury, or destruction resulting from the incident hereinabove described, or done or occasioned, or incurred on the aforesaid voyage during which the aforesaid incident allegedly occurred and for any and all other claims therefor. Petitioner alleges that it has valid defenses on the facts and on the law, and, as owners of F/V SANDY POINT at the time of the alleged incident. Petitioner affirmatively denies all liability, and claims the benefit of limitation of liability provided for in Sections § 30501 et seq. of Title 46 of the United States Code and various statutes supplemental thereto.

**WHEREFORE**, petitioner further prays that:

- (a) This Court order the funds in the sum of \$250.00, deposited in the registry of the Court in lieu of a cost bond, be accepted and approved as to quantum and form;

- (b) This Court make an order approving the above-described stipulation for value with Ad Interim Bond by Omega Protein, Inc., filed with the Court by the petitioner as security for the amount or value of the petitioner's interest in the aforesaid F/V SANDY POINT and her pending freight at the time of the alleged incident, attached hereto as Exhibit "B";
- (c) This Court issue a Notice to all persons asserting claims with respect to which the Complaint seeks limitation, admonishing them to file their respective claims with the Clerk of this Court and serve on the attorneys for the petitioner a copy thereof on or before a date to be named in the Notice and that if any claimant desires to contest either the right to exoneration from or the right to limitation of liability, he shall file and serve on the attorney for the petitioner an answer to the Complaint on or before the said date, unless his claim has included an answer, so designated;
- (d) This Court issue its injunction restraining the commencement or prosecution of any and all actions or suits or legal proceedings of any kind arising out of the casualty heretofore described against petitioner and/or their insurers, or against F/V SANDY POINT or against any property of petitioner, except in this action to recover

damages for or in respect of any loss, damage, death, injury or destruction caused by or resulting from the aforementioned incident, or done, occasioned, or incurred on the aforesaid voyage;

- (e) The Court adjudge that petitioner is not liable for any loss, injury, expense, damage or claim whatsoever in consequence of the incident heretofore described, or that if such liability ever existed, that it be limited to the value of the petitioner's interest in and to F/V SANDY POINT and her pending freight at the time of the incident aforesaid, and that petitioner be discharged therefrom under the surrender of such interest, and that the money surrendered, paid or secured to be paid as aforesaid, be divided pro rata according to the hereinabove mentioned statutes among such other claimants as may duly prove and claim in accordance with the provision of the order hereinabove pray for, saving to all parties any priorities to which they may be legally entitled, and that a decree may be entered discharging petitioners from all further liability; and
- (f) That petitioner may have all such other and further relief as law and justice may require.

Respectfully submitted, this the 19<sup>th</sup> day of May, 2011.

Omega Protein, Inc.

BY: FRANKE & SALLOUM, PLLC

BY:

  
FREDRICK B. FEENEY, II  
STATE BAR NO. 5168

FRANKE & SALLOUM, PLLC  
ATTORNEYS AT LAW  
POST OFFICE DRAWER 460  
GULFPORT, MS 39502  
TELEPHONE: (228) 868-7070  
FACSIMILE: (228) 868-7090  
E-Mail: [FBF@FRSLaw.com](mailto:FBF@FRSLaw.com)

ELTON F. DUNCAN III, (LA#14967)  
KELLEY A. SEVIN (LA#25871)  
HARRY E. MORSE (LA#31515)  
400 Poydras Street, Suite 1200  
New Orleans, LA 70130  
Telephone: (504) 524-5566  
Facsimile: (504) 524-9003  
E-Mail: eduncan@duncour.com  
E-Mail: ksevin@duncour.com  
E-Mail: hmorse@duncour.com  
Attorneys for Omega Protein, Inc.  
Pro Hac Vice Admission Pending